IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 56 of 2000

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEEPAK VASANJI NAGRECHA

Versus

STATE OF GUJARAT

Appearance:

MR PJ KANABAR for Petitioners

ND GOHIL, APP for Respondent No. 1

MS SEJAL K MANDAVIA for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 04/04/2000

ORAL JUDGEMENT

1. This is an application under section 482 of the Criminal Procedure Code, at the instance of the original accused, for quashing the order of the learned Magistrate directing police investigation under section 156(3) of the Criminal Procedure Code, on the basis of a criminal complaint filed by the second opponent-complainant,

alleging the commission of offences by the accused under section 406 and 420 of IPC.

2. As a result of the hearing and discussion a consensus has been arrived at between the learned counsel on the basis of which it is observed and found that the impugned order of the learned Magistrate directing investigation under section 156(3) of the Criminal Procedure Code is issued mechanically and without application of mind inasmuch as the same does not set out the reasons therefor. This is not in consonance with the relevant principles laid down in the High Court decisions in the case of Suresh Kumar Gupta Vs. State of Gujarat, reported at 1998(1) GLR 327 and in the case of Arvindbhai Ravjibhai Patel Vs. Dhirubhai Sambhubhai Kakadia, reported in 1997(2) GLR 1572.

3. On the facts and circumstances of the case, therefore, the impugned order directing investigation under section 156(3) of the Criminal procedure Code is quashed and set aside. It shall, however, be open to the present applicants-original accused to file an appropriate application before the learned Magistrate requesting that their contentions and objections be taken into consideration before passing any order for such investigation, if considered necessary on the basis of the complaint. The learned Magistrate shall apply his mind to all the relevant facts and circumstances of the case to the averments made in the complaint and to the objections and contentions raised by the present applicants, and if considered necessary, may pass a reasoned speaking order as may be necessary.

4. The present applicant shall make the necessary application latest by 18th April 2000. The learned Magistrate shall hear the concerned parties and shall pass the necessary orders within two weeks thereafter. It is clarified that until a fresh order is passed by the learned Magistrate, the ad interim relief granted in the present application shall continue to operate.

5. It is, however, clarified that if the applicants do not present a fresh application as contemplated in the present order by the due date, the present order shall stand revoked ipso facto without any further orders. This application is accordingly disposed of. Subject to the observations made herein ad interim relief stands vacated.

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